

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,

Plaintiff,

v.

J. CEBALLOS, et al.,

Defendant.

No. 1:20-cv-01821-DAD-SAB

ORDER DENYING MOTION FOR
RECONSIDERATION

(Doc. No. 7)

Plaintiff Raymond Alford Bradford is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 6, 2021, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's application to proceed *in forma pauperis* be denied and that he be required to pay the \$400 filing fee in full to proceed with this action because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 4 at 2–4.) On February 1, 2021, the undersigned adopted those findings and recommendations in full and directed plaintiff to pay the required filing fee in order to proceed with this action. (Doc. No. 6.) On February 10, 2021, plaintiff filed a motion for reconsideration of the undersigned's

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1 February 1, 2020 order adopting the magistrate judge’s findings and recommendations. (Doc.
2 No. 7.)

3 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
4 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
5 on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
6 evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has
7 been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment.”
8 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
9 event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

10 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
11 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
12 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted); *see also Harvest v. Castro*, 531 F.3d
13 737, 749 (9th Cir. 2008) (addressing reconsideration under Rule 60(b)). In seeking
14 reconsideration under Rule 60, the moving party “must demonstrate both injury and
15 circumstances beyond his control.” *Harvest*, 531 F.3d at 749 (internal quotation marks and
16 citation omitted).

17 “A motion for reconsideration should not be granted, absent highly unusual
18 circumstances, unless the district court is presented with newly discovered evidence, committed
19 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
20 raise arguments or present evidence for the first time when they could reasonably have been
21 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
22 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
23 original). Further, Local Rule 230(j) requires, in relevant part, that a movant show “what new or
24 different facts or circumstances are claimed to exist which did not exist or were not shown”
25 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
26 not shown” at the time the substance of the order which is objected to was considered.

27 In his motion for reconsideration, plaintiff argues that he should be granted *in forma*
28 *pauperis* status because he is “under imminent danger daily.” (Doc. No. 7 at 4.) The gravamen

1 of plaintiff's argument appears to be that he is in danger because the prison officials at Salinas
2 Valley State Prison ("SVSP") are allegedly conspiring to harm him and organize attacks on him
3 regularly. (*Id.*) In its original order denying plaintiff *in forma pauperis* status, the court held that
4 plaintiff's alleged imminent danger did not relate to the causes of action alleged in his complaint
5 filed in initiating this case. (Doc. No. 6 at 2.) In his causes of action plaintiff alleges that
6 defendants interfered with his "right to obtain judicial review of the legality of his incarceration"
7 and that defendant Munoz "denied plaintiff's witnesses and written statement" in violation of his
8 due process rights. (Doc. No. 1.) Plaintiff has presented no new evidence in his pending motion
9 that would alter the court's prior conclusion that the imminent danger he now claims has no
10 connection to the causes of action presented by his complaint filed to initiate this case. Moreover,
11 plaintiff has now been moved to a new health care facility according to his recently filed notice of
12 change of address. (*See* Doc. No. 9.) Thus, any alleged danger to plaintiff at SVSP appears to no
13 longer impact plaintiff.

14 Accordingly,

- 15 1. Plaintiff's motion for reconsideration (Doc. No. 7.) is denied;
- 16 2. Within twenty-one (21) days following service of this order, plaintiff shall pay the
17 required \$400.00 filing fee in full to proceed with this action;
- 18 3. Plaintiff's failure to pay the filing fee within the specified time will result in the
19 dismissal of this action; and
- 20 4. This matter is referred back to the assigned magistrate judge for proceedings
21 consistent with this order.

22 IT IS SO ORDERED.

23 Dated: April 26, 2021

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UNITED STATES DISTRICT JUDGE